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IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,
Plaintiffs,
vs.
R.J. REYNOLDS TOBACCO
COMPANY, et al.,
Defendants.
_____/

Miami-Dade County Courthouse
Miami, Florida
Wednesday, 1:30 p.m.
November 18, 1998

TRIAL - VOLUME 139

The above-styled cause came on for trial before the Honorable Robert Paul Kaye, Circuit Judge, pursuant to notice.

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On behalf of Defendant R.J. Reynolds
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On behalf of Defendant Brown & Williamson
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On behalf of Defendants Liggett Group
and Brooke Group
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On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard

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APPEARANCES (Continued)

DEBEVOISE & PLIMPTON
ANNE COHEN, ESQ.
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On behalf of Defendant The Council for Tobacco Research

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On behalf of Defendant Lorillard

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On behalf of Defendant Dosal Tobacco Corp.
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On behalf of Defendants Liggett Group
and Brooke Group

I N D E X

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E X H I B I T S

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None			

(Whereupon, the following proceedings were had:)

THE BAILIFF: All rise.
THE COURT: All right. Are we ready?
MR. HEIM: Yes, sir.
THE COURT: Everybody?
MR. ROSENBLATT: Yes, sir.

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THE COURT: All right. Let's get the jury out.
(The witness took the witness stand.)
THE BAILIFF: Bringing in the jury.
(The jurors entered the courtroom.)
THE COURT: All right. Be seated, please.
All right. Folks, I forgot to ask you this morning when you came in whether anybody had seen anything on TV or read anything in the papers or magazines or elsewhere at all about tobacco, the case, or anything related to the issues involved here. So I forgot to ask you this morning. So I'll ask you now at lunch time. Anybody?
THE JURORS: No.
THE COURT: All right. You ready?
MR. HEIM: Yes, sir.
CROSS-EXAMINATION (Continued)
BY MR. HEIM:
Q. Good afternoon, Dr. Dunn -- Dr. Dunn. I was

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thinking about Dr. Dunn because I was going to ask you about Dr. Dunn. Maybe I should -- well, I won't. Let me just ask a question.
Doctor, you said -- Dr. Farone, you said, in this morning's testimony, that while Dr. Dunn had never explicitly said to you that he believed nicotine was not addictive, he had never explicitly said that it was addictive either. He hadn't said one thing or the other that you could remember; is that correct?
A. That's correct.
Q. And then I believe what you said was that, however, regardless of whether what he had or had not said to you personally, you believe that he had said that nicotine was addictive in a paper that was offered into evidence yesterday, that paper on -- that I couldn't find called Motives, and Incentives in Cigarette Smoking?
A. It was either that -- is that the one that was given at the conference in St. Martin?
Q. Yes.
A. Yes, that's the one.
Q. All right. Now, I did search around over the lunch hour, as I told you I would, and I found

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that
24 particular exhibit, so this is the Court's
exhibit, and
25 I'm going to hand it to you, if I might.

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1 A. Okay.
2 MR. HEIM: Thank you, Olga.
3 THE COURT: What is the number?
4 THE CLERK: 5027.
5 MR. HEIM: Yes. I believe it was
admitted
6 yesterday as Exhibit 5027.
7 BY MR. HEIM:
8 Q. Now, Doctor, could you take a look
through
9 that exhibit and tell me if you can find anyplace
in
10 there where Dr. Dunn explicitly says that nicotine
is
11 addictive?
12 A. And by that you mean uses specifically
the
13 word "addictive" or "addiction"?
14 Q. Yes, sir.
15 A. Well, I mean, he says things like:
Think of
16 the cigarette pack as a storage container for a
day's
17 supply of nicotine: It is readily prepped for
18 dispensing nicotine.
19 Q. Yes, it says that.
20 A. A convenient 35 cc. mouthful contains
21 approximately the right amount of nicotine.
22 Q. It says that, too.
23 A. Rapid transfer: Nicotine delivered to
24 bloodstream in one to three minutes; non-noxious
25 administration.

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1 Smoke is beyond question the most
optimized
2 vehicle of nicotine, and the cigarette is the most
3 optimized dispenser of smoke.
4 And then he goes on: Lest anyone be
made
5 unduly apprehensive about this drug-like
6 conceptualization of the cigarette, let me hasten
to
7 point out that there are many other vehicles of
8 sought-after agents which dispense in dose units.
9 And he talks about tea and coffee.
10 Q. And wine, I guess.
11 A. If we accept the premise that nicotine
is
12 what the smoker seeks, we've still not answered
the
13 question "Why do people smoke?"
14 It goes on to discuss the demographic
and
15 morphological characteristics of people, the
16 physiological responses to smoke inhalation,
elevated
17 heart rate, elevated coronary flow, reactive

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release of
adrenaline, alterations in electrical potential patterns of the brain.
Q. Your understanding here, he's talking about real people, not rats, right?
A. Correct.
I don't so far see the specific word "addiction," even though it discussed all the tenets of it.

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The known physiological effects of smoking are those that we consider as indicating body activation or arousal. This fits in nicely with the smoker's statement "It stimulates me."
But then he goes on to say: But sometimes people say it calms me.
He talks about a lot of neuropharmacology evidence for -- in the brain and goes into why people smoke, but I don't see so far specifically the specific use of the word "addiction."
Q. And in looking, as you have -- and if we get to the point where we take a break this afternoon, I'll give you a chance to read it more carefully because I understand that you have only had a few minutes to look at it. Looking at it -- and you know of course that I've looked at it -- you can't find the word "addiction" in there, right?
A. That's correct.
Q. And you can't find the word "dependence" in there either, right?
A. I didn't look for "dependence," but since you probably looked at it more carefully, I'll accept that.
Q. Okay. Now, Doctor, I'm going to move on to another area, but I wanted to ask you something that I forgot to ask you this morning.

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Toward the end of your testimony yesterday, you were asked a question by Mr. Rosenblatt about whether you had ever met with him before last -- this past Sunday or Monday. I don't remember whether it was

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Sunday or Monday.
A. I think it was Sunday.
Q. Sunday, okay. And I think your answer was that before Sunday, you had never met Mr. Rosenblatt, correct?
A. As far as I can recollect, that's true, yes.
Q. But I gather you had met his co-counsel, Mr. Douglas, before last Sunday?
A. Oh, yes.
Q. Okay. And how long have you known Mr. Douglas?
A. You want a time, right?
Q. The best you can.
A. Late 1996, the middle of 1996.
Q. A couple years?
A. Yes.
Q. Okay. And you said in response to a question -- well, let me see. Oh, that's right. That would be a couple years.
So you've known Mr. Douglas since the middle or so of '96 to 1998. That would be a little over two

years?
A. Yes.
Q. All right. Now, you said, in response to a question yesterday, that you had given testimony in a number of cases?
A. That's true.
Q. Okay. And roughly how many cases have you given testimony in involving tobacco companies?
A. Well, some of them are consolidated so it's difficult for me to -- I think the best way I can characterize it, I think it's about 11 days of depositions and maybe 5 days of testimony or 6, something like that now.
Q. Well, would you say that in terms of the number of cases where you've testified, they've been in the neighborhood of 6 to 10 cases?
A. Including depositions, you mean?
Q. Yes, sir.
A. Could be in that range, yes.
Q. And each of those cases you were testifying for the plaintiffs and against Philip Morris or other tobacco companies, correct?
A. That's correct.
Q. Now, I want to talk to you a little bit about tar reduction, which was a subject you mentioned

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yesterday. At the time you came to Philip Morris in 1976, there had already been a fair amount of work done on reducing tar in cigarettes?

A. That is correct.

Q. And am I right that there was a fair amount of focus on reducing tar and nicotine, particularly tar, because the medical and scientific communities were saying that the tar and nicotine levels ought to come down?

A. I don't think that's the only reason for doing it. I mean, you have to believe it yourself to go ahead and do it, and I think --

Q. Okay. Well, that's fair. And you did believe it yourself, didn't you?

A. Yes.

Q. And the idea was that if nicotine is not carcinogenic, then the -- if I can use a loose term here, the bad stuff in cigarette smoke is in the tar, and the idea is just bring as much of the tar level down as you can. Is that a rough translation of what you're trying to do?

A. Rough translation, yes. I mean, the idea is that if we're going to have, you know, socially-acceptable drug use, which is what nicotine is, to do that as best we can without causing damage,

and if the damaging compounds are in the tar, the ideal situation would be to eliminate the tar and simply have a nicotine delivery device. Bringing it down then is a road to that end.

Q. So what you're saying is that if society has decided that cigarettes are going to be a legal product and that people can have the choice to smoke them, one way to try to make the product safer is to bring down that element of the product that has in it what you believe to be the harmful substances, I guess would be the word I would use. Is that what you're saying?

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A. Yes, myself and a lot of other people.
Q. Right, I understand that.
By the way, Doctor, because the word gets used so much, I wondered if you would help us with a definition. The word "carcinogenic," carcinogenic, is a word that's been used a lot in the courtroom.
Now, that word actually means when something would -- when an agent is carcinogenic, it means that it can cause cancer, not that it does, but that it can cause cancer at a given dose level; would that be right?
A. Well, there's a whole big question about dose-response and carcinogens and whether a single molecule is enough to do it or you need 10 or you need

100. And I don't think that issue has been resolved, but it depends on how it's being used.
For example, in some states, when they label something as a carcinogen, it says that it is known to cause cancer in humans. Sometimes it says it's known to cause cancer in animals.
So there is -- cancer causation in humans can usually only be established statistically, so you rely on animal testing. And if, in fact, animal testing shows that it's a carcinogen, you might opt to remove it from products being sold, or you might, say, as we have with saccharin, for example, put a warning on it and let people know that it's carcinogenic in animals.
So it's kind of -- you have to be really careful about the term "carcinogenic."
Q. And that's the reason I was asking you to help me with this, help all of us with this. I mean, technically in science, many scientists use the term to say that a substance or an agent that is carcinogenic is something that will cause tumors in laboratory animals at certain doses. That is one scientific definition for a carcinogen, right?
A. That is a laboratory definition, yes.
Q. And, in fact, there are many carcinogens

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in
what we all take into our body mostly every day, but

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they're in very, very small dose levels, right?
A. But, again, I would state that that doesn't say that they can't cause cancer in low dose rates.
Q. No, it doesn't. It just simply says that it may or it may not. I mean, the fact that there is a carcinogen, for example, in a food product, in peanut butter, doesn't mean that it causes cancer in people who eat peanut butter, right?
A. No. What it means is, if there is a carcinogen in peanut butter, that the more times that you are exposed to that -- it's like shooting bullets at a person. The first 20 might miss, the next 20 might miss, but the more bullets you shoot, the higher the probability that one of them hits, causes the damage, and in this case the damage is to the DNA or to the replicating mechanism of the cell. As soon as that's caused by a single bullet, then you have cancer.
So it's a dose response, but in this case, the dose is how many times have you shot the bullet.
Q. Do you know, for example, Doctor, whether or not there are any carcinogens in peanut butter?
A. Well, if you do not remove all the aflatoxin, for example, and there is a de minimis amount that you can't detect by the most sensitive tests, then it could be a small amount of carcinogen, which, in the case of

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peanut butter, is probably deactivated by your stomach, but it's still there and allowed. Just like with saccharin, saccharin is a carcinogen in animals that we allow to be sold.
Q. Are there any carcinogens in bacon?
A. Well, nitrosamines, yes, the same. But, again, I don't want to confuse people with the difference between eating it and inhaling it, because they're totally different things.
Q. But the point is that in terms of trying to

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establish a definition for carcinogen, what you're saying is you have to be careful when that word is used to understand its context in terms of what is meant by that term when you're looking at scientific literature; wouldn't that be right?

A. Correct, and also the mode of administration. If you inject the carcinogen rather than eating it, where when you eat it your stomach can deactivate it or it can pass on through you, it's not anywhere near as damaging as injecting it or inhaling it.

Q. Well, let's talk about what I'll refer to as the hypothesis. Would you agree that it's a hypothesis that since tar has carcinogens in it, that it is a good thing to try to reduce tar?

A. It's a good thing to do that. There are two

things. You've got to get it down low enough so that you know you've had some effect.

And the second thing is you're making -- we're all making the assumption that the people are going to use the product anyway. So then you have to get it -- but the main --

Q. Well --

A. I'm sorry.

Q. I'm sorry.

A. The main thing is to get it down low enough so where you know it doesn't have an effect anymore.

Q. So it is a good thing for you -- and, in fact, you worked on it -- for a tobacco company to try to reduce tar levels in its products?

A. It's a good thing to do that and to prove that, in fact, you've lowered it beyond the limit where it doesn't cause any problem.

Q. Now, in fact, tar and nicotine levels were brought down considerably during the time that you were at the company, weren't they?

A. If I recollect, I did plots on this, but up through 1975, the tar and nicotine came down pretty much together. And then from '75 through '84, the

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period we're talking about, the tar continued to decline, and the nicotine sort of leveled off, so that

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we increased the nicotine-to-tar ratio, we call it.

Q. Right, but that was part of the work that you and your scientists did in trying to make a step forward in bringing down the carcinogens in tobacco smoke; isn't that fair?

A. That's the objective of that work, yes.

Q. Okay. And you thought, did you not, that that work was a big step in the right direction?

A. The hypothesis that we put forth is that if we could remove the carcinogens, you would make the product safer.

Q. Okay. Now, Doctor, when you bring down tar and nicotine levels generally, when you're working to do that without regard to a specific compound in smoke, is that referred to as general reduction?

A. Well, I mean, you could characterize it that way.

Q. Well, let me ask it the other way around.

When you're trying to remove one smoke constituent, or reduce it down as far as you can, and you're targeting in on a particular carcinogen, that is known as selective reduction; is it not?

A. Yes, but almost -- I mean, the terminology has been used, but I think we don't want to confuse people. Almost anything you do to change the design of

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a cigarette changes the chemistry of what happens.

Q. And that's exactly where I was going to go with you in these questions, because we really don't want to confuse anybody.

And, in fact, when you're trying to reduce one specific constituent of smoke, sometimes there are trade-offs, are there not?

A. That's correct.

Q. I mean, this is not easy scientific work, right?

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A. Well, no, it's not.
Q. So let me take nitrates, for example, because the jury has heard a lot about nitrates.
Nitrates are responsible for the formation of some tobacco-specific nitrosamines, right?
A. That's correct.
Q. Okay. And so if you're able to decrease nitrates in tobacco smoke, you're able to then decrease these tobacco-specific nitrosamines, which people -- I was going to write on it, but it's all the way over there (indicating), and it's too far to walk. TSNA they're called?
A. Tobacco-specific nitrosamines, yes.
Q. So if you decrease the nitrates, you can bring down these tobacco-specific nitrosamines, and

that's a good thing to do; we agree with that?
A. Especially if you can prove you've brought them down low enough to have an effect in biological and eventually human testing.
Q. But in order to get to that point, you've got to start work on bringing them down and that's good work to do; is that right?
A. That's correct.
Q. But when you decrease your nitrates as you're working on bringing these down, you can increase what are known as PAHs, right?
A. You can, but you don't have to. I mean, PAH is the other class -- I don't think they actually decrease with the removal of nitrates. What happens is the tobacco smoke becomes more biologically active without the nitrates present. So I'm not sure.
Q. If I said decrease, I'm sorry. I didn't mean to confuse you. If I said that, I was wrong.
What I meant to say was that: In your work, to decrease the nitrates, you sometimes, as a result, increase the polynuclear aromatic hydrocarbons. All these are fancy words; that's why I'd rather say PAHs.
But that has happened, has it not?
A. Yes, it has.
Q. And the point of all this is really the point

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I think you were going to make, Doctor, that sometimes you can work on decreasing one thing, and you have to be careful that in the process of trying to reduce one constituent that you're worried about, that you're not creating another problem somewhere else; isn't that fair to say?

A. Yes, and that's why it's critically important that you have to test the final product to make sure that you've achieved what you thought you were doing, because if you don't do that, then you don't really know whether you've made an advance or not.

Q. And you have to test all along, don't you, to see how you're doing?

A. Each step. So if I go from Marlboro to Marlboro Light to Merit to Merit Ultra Light, each of those products needs to be tested, as they're sold, so that we know that there is less carcinogenicity or mutagenicity, however you want to say it, in Marlboro, then it goes down to Marlboro Lights, then it goes down to Merit, then it goes down to Merit Ultra Lights. So you have to have that entire sequence.

Q. Now, your group in R&D was working on different things that you felt were useful and important to reduce tar levels while you were at the company, and one example of that would be the process

for making expanded tobacco, right?

A. That's correct.

Q. Okay. Because -- as I understand it, when you came to the company, there were already people working for you on this dry ice expanded tobacco project, correct?

A. Well, the company had started working on it. They ran into some problems, and the people working for me helped them solve the problems for the dry ice expanded tobacco process.

Q. And this method that was developed, your people helping to solve the problems, you believed that that was good scientific work that they were

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doing, did
you not?
A. Yes, I did.
Q. And the expanded tobacco, which I think the
jury has already seen, which is kind of a popcorn
technique, but the expanded tobacco has less tar and
nicotine than regular tobacco, than tobacco that's
grown in the field?
A. Yes, it does.
Q. And the idea is that the expanded tobacco has
less weight and it fills more of a space in the
cigarette rod, right?
A. Yes. Cigarettes are sold by volume, not by

weight. So if you can fill it up with stuff that isn't
tobacco, you have less to burn, you'll create less tar.
You'll also make more money.
Q. Right, two laudable objectives, right?
A. Right.
Q. So you get the same firmness in the cigarette
with less tobacco?
A. Yes, before you light it.
Q. And if you were just to test -- and I think -- if you were just to test expanded tobacco
against regular laminate tobacco, just do that test,
take the regular laminate and expanded tobacco, you
would find that the expanded tobacco is less
tumorigenic than the laminate?
A. Well, it depends on what tobacco you tested
it against.
Q. Let's say you tested it against a Burley or a
bright laminate tobacco?
A. Well, if you tested it against a very low
nicotine, low nitrate, bright tobacco, probably not so
much of a difference. If you test it against the
Burley tobacco, there would be a large difference.
Q. Okay. But you were -- as the director of
applied research, you were proud of the work that your
people did in helping to solve the problems with

getting the expanded tobacco to the point where Philip
Morris wanted it to be, weren't you?
A. Yes, we were.
Q. Now, another aspect of cigarette design is
reconstituted sheet tobacco, right?

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A. Correct.
Q. And one of the benefits of reconstituted sheet tobacco was that you could remove things and add things, right, because of the process that you were using?
A. Correct. You're making an artificial -- a sheet of paper essentially in one way.
Q. It's a paper-making process?
A. That's one of the processes. Another one is called band cast process, laying it on a metal sheet.
But in either case, you have the opportunity to remove things that are bad, which you have tested and found to be bad, from the material. And then you could add something which you perceived as being beneficial.
Q. And being able to do that you consider to be a good thing, right?
A. Yes. Having that technology available is a good thing.
Q. And part of that process enabled Philip

Morris to use the stems of the tobacco plant which burn cleaner than the rest of the tobacco and has less nicotine in it; isn't that right?
A. Yes. Cellulose, which is a prime component in the stems, tends to burn relatively cleanly, and if you had a cigarette that was made solely out of cellulose -- and people have actually made them -- that tends to have lower tumorigenic activity than cigarettes made out of tobacco.
Q. It would have less phenols in it?
A. Yes.
Q. Less benzopyrene?
A. Yes.
Q. Now, I know another project that you and your researchers, the 200 or so people that were working for you, was involved with was paper porosity, right?
A. Yes.
Q. And this is where there are holes in the paper that allow more exchange between the rod, the rod being the cigarette, and the surrounding air?
A. That's correct.
Q. And the good thing about this is that the holes not only reduce tar and nicotine, which they

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do
because of the air, but they can reduce other things as
well, right, by having those holes in there?

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A. Well, the main thing is it helps with carbon
monoxide and other gases. The slight drawback is that
the -- it increases sidestream, which the smoker then
also gets exposed to, and also one has to be concerned
about the relative toxicity of the vapors coming out
through those holes versus the stuff that's drawn in --
mainstream we call it -- that the smoker draws in.
But by and large, to the smoker, in
mainstream, it's an advantage because it reduces the
carbon monoxide and certain other materials that they
would otherwise get more of if it weren't for the
paper.
Q. And that's why you were working on it: It's
an advantage to the smoker, it reduces carbon monoxide,
because the air comes in and the carbon monoxide goes
out?
A. Yes.
Q. And that helps to reduce other gas phase
constituents like benzopyrene?
A. Yes. But, again, we have to recognize we're
not sure we've reduced them far enough, and the
evidence says no.
Q. But if you go with the hypothesis that we
started with, that reducing these things is a good
thing, you considered it a good thing?

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A. You're moving in the right direction, but you
have an obligation to find out whether you've gone far
enough.
Q. And did it help reduce tobacco-specific
nitrosamines?
A. Yes, it did.
Q. And reducing those kinds of things you viewed
as good things, didn't you?
A. Yes.
Q. And then you worked on ventilation of filters
as well? There is filter ventilation work that was
done by your group?
A. The perforation of the filter-tipping paper

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that leads to dilution or ventilation, so-called.
Q. And the idea here -- and I'm sure you'll correct me if I'm wrong, but the idea here was that the filter tips allow air to come in, to dilute the smoke; isn't that basically it?
A. Basically, when you suck on the cigarette, part of your inhalation or part of the drawing action results in air coming through the dilution holes, we'll call it, or ventilation holes, diluting the smoke, so you end up with less than you would have gotten if the holes weren't there.
Q. So if you wind up with less, then by virtue

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of the process you're going to wind up with less tar, right?
A. Correct.
Q. Okay. And am I right, Doctor, that you consider this kind of ventilation one of the most important things that was done while you were at Philip Morris to help bring down tar and nicotine levels?
A. Yes. And again, it's under the hypothesis that you're bringing it down far enough to actually make a safer product.
Q. But you were proud of the work that you did in that area, weren't you?
A. Yes. We thought it was a step in the right direction.
Q. And, in fact, was it your group, under your direction, that came up with the laser method of putting these holes in?
A. Yes, it was.
Q. Okay. And that was done using lasers by very good researchers in the R&D department?
A. That's correct.
Q. I guess one of the issues that you had to work with was the location of the holes, correct?
A. Yes.
Q. All right. Because if you put the holes too

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close to the lit end of the cigarette -- we have a cigarette here (indicating) -- the lit end where the hole is, if you put the holes too close to the lit

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end
of the cigarette, it becomes hard to draw on the filter, right?
A. Yes.
Q. But if you put the holes too close to the other end, if you put it too close to the -- away from the lit end, you can get what is known as lip occlusion, right?
A. Yes, you can -- the smoker can cover up very easily the holes and then it doesn't do any good to have them there.
Q. Yes, because if you place the holes in such a way that the smoker's lips cover it, it doesn't do any good because you don't get the ventilation, right?
A. That's correct.
Q. Okay. And I gather you wanted to avoid both of these things; you wanted to place the holes in a way so that the smoker wouldn't have lip occlusion?
A. Well, there's two parts to it. I mean, if you put them too far forward, you make the resistance to draw high and people might not smoke that cigarette; it's too hard to draw on.
But it also places them in a place where they

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could occlude them with their fingers, because a lot of people hold the cigarette just ahead of the filter tip or right at the edge.
So the objective, if you're trying to use this type of technology to dilute the smoke, you want to place the holes optimally. I think that's the best way to put it.
Q. Okay. And did you and your research group do work on trying to place these holes optimally so that you wouldn't have either problem?
A. Yes.
Q. Okay. And you made recommendations for how the laser and where the laser would place the holes?
A. Yes, we did.
Q. Okay. And you believe that the adoption of those techniques were important and good steps

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forward
in cigarette design to lower tar, right?
A. Consistent with final proof that they worked,
yes.
Q. Doctor, while you were there -- and we're
dealing with the period, I guess, '76 to '84 -- was
there work done on what is known as unconventional
cigarettes?
A. Yes.
Q. And what do you remember about the -- there

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was a project. What was the name of that project?
A. Delta.
Q. Project Delta?
A. Yes.
Q. And that project, that was toward the tail
end of your time there?
A. No. It went through several reincarnations.
I think it was ongoing when I -- as early as 1977, some
of the work was ongoing because it was a top secret
project. And initially I wasn't allowed even to know
about the project, even though I had people working for
me that were working on the project. It was kind of a
strange situation, but the project was going on.
Q. Okay. And you did come to learn about the
project?
A. Yes.
Q. And, in fact, you were involved with trying
to help people with some of the mechanical problems
that were involved in that project, were you not?
A. Chemical problems.
Q. Chemical problems, right.
A. Yes.
Q. All right. Now, that project, that Project
Delta, was to make a safer cigarette by using a
different heating source; is that right?

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A. The objective was to try -- and we know that
when you burn things, it makes compounds that are bad.
So the idea was to burn it as little as possible, and
hopefully you would generate as little of the bad
things, which, upon testing, would show you whether or
not you made something that would result in

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reduced
risk.
Q. Okay. And that project was ongoing when you
left?
A. Yes, it was.
Q. Okay. And one of the scientists that was
working on that project was Dr. Cliff Lilly?
A. Yes.
Q. And Dr. Lilly is a scientist for whom you
have high regard?
A. Yes.
Q. And you consider Dr. Lilly to be a high
integrity individual?
A. Well, I haven't talked to him since 197 --
1984, but as far as I knew at that time, yes.
Q. Okay. And when you left, you considered him
to be a person of integrity?
A. Yes.
Q. And he did good work, as far as you were
concerned?

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A. I was very pleased with his work, yes.
Q. Okay. Now, part of the mission of your 200
people, that were working for you in 1984, was to make
a safer cigarette for the company; isn't that right?
A. Yes.
Q. And this was certainly an objective that you
believed in?
A. Yes, it was.
Q. And you believed it to be a worthwhile
objective for Philip Morris?
A. Yes. Anything that would, you know, reduce
the 400,000 deaths per year, or 350 at that time, would
be worthwhile, yes.
Q. So that was something you wanted to do: You
wanted to work on making a safer cigarette and you
wanted to have your people involved in that effort?
A. Yes.
Q. And you were hired -- in fact, Philip Morris
hired you with the express purpose of having you work
on safer cigarettes?
A. That was one of the two reasons.
Q. Right. The other was acquisition?
A. Yes.
Q. But you spent a considerable amount of your
time that you were there working on safer

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cigarette

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projects?
A. That's true.
Q. And you were paid to do that by the company?
A. Yes, I was.
Q. And the 200 or so scientists -- I don't know whether they were all scientists, but the 200 or so employees that worked under you, many of them spent a good part of their time working on projects that were to make a safer cigarette, right?
A. That is correct.
Q. And some of them actually -- many of them spent 100 percent of their time on that, right?
A. Yes.
Q. And that was something that they, too, were hired to do: They were hired to make safer cigarettes, and they were paid, these employees, to work on these projects for making safer cigarettes?
A. They were paid to do the research that would provide the technology that would lead to safer cigarettes.
Q. And there were other employees and other directorates that also worked on safer cigarette projects as well, right?
A. That's correct.
Q. And, Doctor, you, yourself, are proud of the

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work that you and your colleagues did, while you were at the company, to try to develop a safer cigarette, weren't you?
A. We published some of it. We talked to people about it, and yes, we were.
Q. And you believe that that work was in the best interest of Philip Morris customers?
A. Yes. We believed at that time, pending again this proof that it really works, which I never saw, but taking that position that it works, you would be very proud of it. If it's not used or you know it doesn't work, then you've got to question --
Q. And you didn't know that one way or the other; that's what you said, right?

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A. I didn't have any evidence that it worked; I didn't have any evidence that it didn't work.
Q. Well, you had some evidence that many of these projects you were working on had reduced tar and nicotine levels; you just didn't know whether it reduced it enough?
A. Correct. I didn't know whether it reduced it enough.
Q. But all of these things that we talked about, you knew that they had actually worked --
A. In terms of reducing tar, yes.

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Q. And that's what you were proud of?
A. Yes.
Q. And you believe that your work not only served the interest of Philip Morris' customers, but you believe that it served the interest of the medical and scientific communities as well, didn't you?
A. Yes.
Q. And as of the time that you left in 1984 -- and we talked about you leaving this morning -- the company was continuing to work on a number of projects to try to make cigarettes safer; isn't that true?
A. That's my understanding, yes.
Q. So when you left on July 6th, 1984, these projects didn't stop; at least as far as you knew the projects were going forward?
A. Well, some of them stopped, but not all of them stopped. But some of them stopped.
Q. Well, on the day that you left, the projects that we talked about, those projects either had been accomplished or they were still working on them, right?
A. Correct.
Q. And at the time that you were terminated, Doctor, or fired, or whatever the right term is here, this was not a situation where you were so unhappy with what the company was doing that you were ready to quit

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in disgust over the company's effort to make safer cigarettes; that was not the situation; isn't that right?
A. That's correct. We were hoping that the work

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that we were doing would result in fewer deaths caused by smoking per year, and we were anticipating being able to see that death rate among smokers come down due to the research we were doing.

Q. And you believe that the interest was there on the part of the company to accomplish that goal?

A. Yes.

Q. And it's true, is it not, Doctor, that you felt, when you left the company in 1984, that the company was working on technology, that would ultimately be released, that would result in safer products and the reduction of disease?

A. Yes. You just have to qualify that by my understanding at the time that I still hadn't seen any evidence that that was, in fact, the case, but that was our expectation. It was sort of what we call an untested hypothesis. You've been doing this work. You think it's in the right direction. But now you want to see the payoff.

Q. And as of the time that you left, you thought that the company was doing good things that would, you

hoped, produce good benefits for the people who were smoking Philip Morris cigarettes; that's a fair statement, isn't it?

A. That's a fair statement.

MR. HEIM: May I have a minute, Your Honor?

THE COURT: Sure.

MR. HEIM: No other questions, Your Honor.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. ROSENBLATT:

Q. Dr. Farone, Mr. Heim began his questioning this morning on the subject of your having gotten fired. We tap danced around that word: Were you fired? Were you terminated?

You got fired, right?

A. Correct.

Q. You had worked for Philip Morris for eight years, correct?

A. At that time, yes, more than eight years.

Q. And on the day that you got fired, after having worked for them for eight years, you were

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told
22 to leave the premises that very day and not show
your
23 face again; is that correct?
24 MR. HEIM: We're leading the witness,
Your
25 Honor.

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1 THE COURT: It is leading the witness.
2 Sustained.
3 BY MR. ROSENBLATT:
4 Q. What did the guy who fired you tell you
about
5 your access to the premises of Philip Morris after
the
6 day he fired you?
7 A. Mr. Case informed me that Dr. Hausermann
was
8 to take me to my office. I was to pack up my
9 belongings and I was to leave the premises
forever.
10 Q. Did you say to him: I've worked here
eight
11 years. What's the hurry? I understand I'm fired,
but
12 I'd like to come back next week and look through
my
13 desk, make sure I haven't left anything, anything
like
14 that?
15 A. No, just two statements that I've
discussed.
16 Q. Who is Mr. Case?
17 A. Barry Case was the -- I don't really
know his
18 official title, but it's sort of like human
resources
19 director or director of personnel.
20 Q. And who did you say was present at the
time
21 of the meeting when Mr. Case formally fired you?
22 A. My boss, Dr. Max Hausermann, who had
come
23 back from his vacation. He had been called back
off
24 vacation -- actually, I thought he and his wife
were in
25 Canada, so I was surprised to see him in the room
when

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1 I went in to talk to Mr. Case.
2 Q. What was your understanding of the
purpose of
3 that meeting?
4 A. Well, when they asked me to --
5 Q. Yes, when they asked you to come.
6 A. I got a message just to please come to
7 Mr. Case's office. That's the only message I got.
And
8 I was to be there by 11 a.m., or something like
that.

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And like any other meeting, you go to the meeting.
Q. Now, I thought Mr. Heim asked you or you said that Mr. Case read from a prepared statement at this meeting?
A. Well, he said things to me. Again, I mentioned I was shocked and I have found -- there is a statement that he had that he read to me. I didn't find out about that at that time. I just heard some words. But subsequently that document has been made available to me, and I've had a chance to read it.
Q. This is a Mr. Case, not a Dr. Case?
A. Correct.
Q. What did Mr. Case tell you was the reason, after eight years as the director of applied research from 1976 to 1984 -- you were brought into this meeting. You were told in essence you were fired. What reason did he give you as to why you

were being fired?
A. Insubordination, and the company couldn't tolerate insubordination.
Q. Did he tell you what the insubordination consisted of from the standpoint of Philip Morris?
A. No.
Q. Did you ask?
A. No.
Q. Now, Mr. Heim discussed with you -- well, I don't know if this is a letter or a memo from you to Mr. Hausermann, dated June 26, 1984. How would you characterize it?
A. It's a memo that I wrote to Max just before he left, on his way out, so that he would know that I had, in fact, contacted an attorney.
THE COURT: Is there a number attached to that?
MR. ROSENBLATT: Yes. It says Defendants' Exhibit 3148.
THE COURT: Okay. I just want to make sure we have it on the record.
MR. ROSENBLATT: The memo is dated June 26, 1984.
BY MR. ROSENBLATT:
Q. Now, at the very top of the memo -- by the

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way, was this memo typed by you or by a secretary?
A. No. By me.
Q. Typed by you personally?
A. Yes.
Q. At the very top of the memo, you typed Personal and Confidential, and the only person it was going to was your immediate superior, Max Hausermann, correct?
A. Correct. I mean, I didn't limit what he could do with it, but the intent was that when he came back from vacation, we would discuss it. I think that's what it says there.
Q. I want to go through the letter with you and then discuss the background of the letter.
This is to advise you that on June 25, 1984, I retained an attorney for the purpose of taking whatever legal actions are necessary to protect my career from what I perceive as discriminatory treatment.
What was your perception of what the discriminatory treatment was based upon?
A. Well, I'd been there for eight years. I think at that time I was 44 years old. When I consulted with an attorney, he pointed out that because of my wife's unusual circumstance of having filed a

complaint, that sort of getting even with her by firing me was discriminatory treatment.
Q. Now, you go on to say: As we discussed, I believe that the promises made to me by senior management were not kept and that the major reason for this was my wife's complaint against the company.
As we know, our senior management buys millions of dollars of equipment and tobacco on a handshake basis, and, thus, I saw no reason to doubt the authority of the commitments made to me and see no reason why those commitments have not been continued other than my wife's problems with her management.
Now, when you refer to promises and commitments by Philip Morris, specifically what are you talking about?
A. We talked earlier -- I think it was December of 1983 -- this announcement that Dr. Hausermann was forced to make, saying that I was going to take his

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position. For that next six months, in many instances, I acted in his stead. And that was one kind of commitment.

There was a commitment to my wife for an increase, and then there was a commitment to the work in the projects. We're talking about all of those kinds of commitments.

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Q. Now, you go on to say in the second paragraph: I have instructed my attorney to prepare a complaint but not to file it pending your return from vacation and your advice on how to proceed.

A. Correct.

Q. You were asking Hausermann for his advice on how to proceed?

A. You know, I had offered twice to leave. They said: No, we don't want you to leave. This has not to do with the necessity to leave.

Max advises me to go out and get some help, get some opinions, which I did, and I didn't want to do any more than what we had agreed to until I had a chance to talk it over with him.

He could say: Tear this up, or give a reason for management change or what the decision was with my wife. I didn't know what was going to happen.

So I was giving Max an opportunity to sit down with me once again and discuss it, because we had discussed it before, and I proceeded on his advice. In other words, I was sort of at his -- he could have just said: Look, it would have been easier if you just leave and we'll give you a few months to go look for a job, and whatever; that happens to people. But I needed to confirm whether they were going to say bad

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things about me, whether -- what was the whole deal here.

Q. You were 44 years old?

A. Right.

Q. And you figured if you got fired from this job, you were looking at your future?

A. Right.

Q. And how getting fired, after eight years at

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Philip Morris, under unclear circumstances could impact your future?

A. Correct.

Q. Okay. Now, the last sentence in this memo is: I have worked hard and, if I believe my reviews, successfully, but the developments of this year have put eight years of hard work in jeopardy.

Now, what do you mean when you talk about your reviews? I mean, I assume superiors review you, but explain how that works.

A. Well, we had a formal system every year. You get a job review. Those were all extremely good. I think during the period of time I was there, my pay tripled from the time I started until the time I left.

I had every reason to believe that I was doing what people wanted me to do in the way that it was supposed to be done.

So you think the projects -- we knew that people disagreed with some of the projects. We had had discussions on what kinds of projects might be shut down, and you begin to wonder, you know, exactly what's going on.

So that was what I'm talking about. During that last six months, a lot of strange things happened. Dr. DeNoble's project is shut down. There's discussion about shutting down other projects. We're told that we don't want to have any records that people can find in litigation. A lot of strange things happening. So I'm wondering: Okay. Does this all tie in somehow?

Q. Is that essentially what you were referring to when you said: But the developments of this year have put eight years of hard work in jeopardy, and this is being written in June of '84, so we're talking about six months?

A. We're talking about '84, yes.

Q. To your knowledge, Dr. Farone, had you ever

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received a bad review from your superiors on your work performance during the eight years that you were employed by Philip Morris?

A. To my knowledge, I have never, no, I did not.

Q. Now, how long had your wife been with Philip Morris?

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A. Nineteen years.

Q. So, obviously, she started quite a bit before you went to work there?

A. Yes.

Q. Who promised you at Philip Morris that when Hausermann left as vice-president of research and development, you were going to replace him as vice-president of research and development?

A. The way it was -- the way Dr. Hausermann explained it to me, Dr. Wally McDowell, his superior, senior vice-president, dictated that that announcement be made and that that change be made.

Q. And from your standpoint, did you feel that Philip Morris had made a commitment to you that you were going to be elevated to that job?

A. Well, I asked Max again -- I'll say it again. I asked him not to make the announcement. He said: I have to. And Mr. McDowell I had known for seven years, and there was no reason to doubt what was being said.

Q. Okay. Now, what was the date you left in '84, the date you were fired?

A. July 6th.

Q. That's the day this trial began in 1998. What have you done since 1984 up until today professionally, business-wise?

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A. Technology development. I've been consulting and I formed my own company. And soon after I left, and as I mentioned earlier, one of our earliest clients was Dean Witter Reynolds, now Morgan Stanley Witter. We've had clients like NationsBank, Bank of America.

In 1987, the company changed from the original one I formed, which was called Advanced Scientific Applications, to the one that I am now president and CEO of. It's called Applied Power

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Concepts, Inc., and we do chemical, biochemical and energy technology development.

Q. How long have you been living out in California?

A. Since 1985.

Q. When was the very first time that you decided to get involved in a lawsuit against Philip Morris where you agreed to give testimony?

A. In a lawsuit? Well, the very first time that I agreed to be involved in providing any information about Philip Morris or the tobacco industry was 1994.

Q. So you mean from 1984, the time you were fired, July 6, 1984, until 1994, what, if anything, had been your contact with Philip Morris in terms of testifying or in terms of anything else?

A. I met some of the people at American Chemical

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Society meetings, talked to some of them that I met who came to California to live. It was very casual. Nothing formal, and no real work connection at all.

Q. Well, we looked at the memo that you sent Mr. Hausermann, and there was talk about your attorney and having a complaint ready.

Did you ever sue Philip Morris?

A. No.

Q. So although your lawyer was prepared to file a lawsuit at a given point in time, he never filed it?

A. Correct.

Q. What happened in 1994 in terms of any involvement with Philip Morris?

MR. HEIM: Objection, Your Honor. Beyond the scope.

(Proceedings were had at sidebar.)

THE COURT: All right. Let's take a short break, folks.

That's the only way to handle it.

MR. HEIM: Okay.

(The jurors exited the courtroom.)

THE COURT: Okay. By the time the case ends, he'll probably get used to closing the door.

THE CLERK: He probably will.

THE COURT: Where we're going with the next

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series of questions, there's some activities that

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took
place in 1994 to the present, and as I understand it,
you were invited to supply information to some governmental agency, the FDA?
THE WITNESS: Yes.
THE COURT: I don't want you to mention the
FDA. Do not. Suffice it to say that you were invited
to either supply information or help in the presentation of information regarding tobacco research
and all the things that you know.
THE WITNESS: Governmental agency.
THE COURT: Governmental agency, nontobacco
agency, or whatever --
MR. HEIM: Your Honor, I understood the question would be: You were asked by others --
MR. ROSENBLATT: I better write down my question.
MR. HEIM: You were asked by others to provide information.
THE COURT: I don't even mind him saying a
governmental agency. We don't have to say what it was.
MR. HEIM: Well, Your Honor, I would object
to that. Because governmental agency really can be
anything, and I think if he just simply says: I didn't
volunteer it --

THE COURT: You can't always have it your
way. Now, the truth is the truth, and this is what I
go by, what is the truth. It's not going to be detrimental if he says governmental agency. If you
name the agency, then it might have a different implication. But all he's saying is: I was invited by
somebody to give information. And this is the thrust
of what we're talking about. I didn't go and seek it
out. I went on my merry way doing my own work, and
somebody came to me and asked me to help them. I did.
People asked me if I would testify. I said: All right, I would. I didn't go seeking to testify.
This is the thrust of what we're talking about. If it happens to be a governmental agency, fine. I don't want to get into different lawsuits and
all of that, but if you have to offer testimony or information, so be it. And that's as far as we're going to go without naming names. Okay?

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(A brief recess was taken.)
THE COURT: All right. I hope we know what we're going to do, right? Okay.
THE BAILIFF: Bring them in?
THE COURT: All right. Bring them in.
THE BAILIFF: Bringing in the jury.
(The jurors entered the courtroom.)

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THE COURT: Okay. Have a seat, folks. All right. Let's proceed.
BY MR. ROSENBLATT:
Q. You know, Dr. Farone, I had asked you about the time frame between 1984 and 1994 in terms of any contact with Philip Morris, and you said something occurred in 1994 in terms of your being contacted. Tell us about that.
A. I was contacted by a governmental agency to provide advice on the tobacco industry.
Q. Okay. Now, counsel has asked you a bunch of questions about your testifying in other lawsuits against Philip Morris and other tobacco companies. How did that come about?
And the only thing I'm really asking in this question is: Did you volunteer your services to testify against Philip Morris, or were you sought out?
A. I was -- in all cases, I was contacted by the attorneys involved.
Q. At any time, after you were fired by Philip Morris in 1984, did you make it known to lawyers or any other group of people that: Hey, here I am. I'm available to help you against Philip Morris?
A. Not specifically against Philip Morris.
Q. Or any tobacco companies?

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A. Well, after I was contacted by attorneys, then the question became: What can we do? What cases can you do?
Q. That was after 1994?
A. Yes.
Q. Okay.
A. And the question was: What cases can we do? And I don't even know what cases are out there. So basically, it's on sort of a case-by-case basis.
Q. Now, going back for a moment to your wife's complaint against Philip Morris to the Equal

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Employment -- is that it, Equal Employment Opportunity Commission?

A. Yes.

Q. What was the basis of your complaint against Philip Morris?

MR. HEIM: Objection, Your Honor.

THE COURT: Well, I don't want to go into -- well, let's talk about it.

(Proceedings were had at sidebar.)

BY MR. ROSENBLATT:

Q. This episode that you described, after you were fired, you were told to leave, it was unclear to me: Did your appearance in the auditorium with Hausermann take place on that very day?

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A. Yes, it did.

Q. You mean it could be arranged that fast, to get 200 people into the auditorium?

A. Yes. They went back, made a general announcement, and it happened.

Q. Okay. Now, I want to be clear. Were the people in the auditorium only those people who worked directly under you as director of applied research, or was it a broader audience?

A. Everybody, everybody in the R&D center.

Q. Six hundred people?

A. They weren't all there, but all 600 were invited to attend.

Q. And did you talk to the audience from the stage or only Hausermann?

A. No. I just sat in back.

Q. Well, he didn't tell them the truth, did he? And you were fired. He didn't tell them you were fired?

A. He didn't say that, right.

Q. He said what? He made nice-nice?

A. Right. He said that I agreed -- I think the way he put it was it was agreed -- we had no script for this one. I think he put, it was agreed that I would resign. I think that's how he said it. But you'd have

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to ask Max because I don't remember.

Q. Did you ever have an opportunity on the premises of Philip Morris to say goodbye to the people you had worked for for eight years?

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A. The only one was, on Saturday when I came in, he made arrangements for -- this happened on a Friday. So the next morning I came back in and met with Cliff Lilly. Max couldn't be there that day.

So he appointed Cliff to be with me while I cleared out my desk and carried things to the car. So Cliff was the only one that I spoke to after the thing in the auditorium, except for people that came by the house in the next couple of weeks.

Q. Counsel asked you about this Latin expression. Do you understand Latin? Do you speak Latin?

A. Well, I studied it as a child and as a student in high school.

Q. Okay. So what is that expression? The court reporter will hate me for this. The dye is cast. What's the Latin for that?

A. De alea jacta de est.

Q. And you already explained.

Now, there's some Latin right on the pack of Marlboro cigarettes: Veni Vidi Vici?

MR. HEIM: Objection, Your Honor.

MR. ROSENBLATT: Only he gets to do a Latin lesson?

(Proceedings were had at sidebar.)

MR. ROSENBLATT: I'm dropping the Latin.

BY MR. ROSENBLATT:

Q. When did you learn that Philip Morris had purchased INBIFO, the company in Germany?

A. I think some time toward the end of my stay there. I've tried to remember that, whether I actually knew before I left. I think I did.

Q. Were the facilities available in the United States, if Philip Morris had chosen to during your tenure from '76 to '84, to perform in the United States all the experimental work that was done in Germany at INBIFO?

A. Yes. And when I was at Lever, we used laboratories in Rozwell Park. There were several places in the U.S. where it could be done.

Q. Now, counsel asked you questions about the record keeping practices of INBIFO.

If INBIFO, in fact, kept records of what they

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were doing with respect to Philip Morris experimentation, do you have any idea where those records are --

A. No.
Q. -- that were made during your tenure, whether they're in Germany or somewhere else?
A. No, I don't.
Q. Now, let me go over some of the documents that you were questioned about.
Defendants' Exhibit 3989, dated October 22nd, 1980, from DeNoble to Osdene. The subject: Critique of National Institute on Drug Abuse, Technical Review on Cigarette Smoking as an Addiction.
And the first sentence says: The review represents an attempt to classify cigarette smoking as an addiction.
If you know, what was the basic purpose of this memo from Dr. DeNoble to Dr. Osdene?
MR. HEIM: Objection, Your Honor.
THE COURT: Yes. I don't know how he could answer that question, Stan, unless he was part of it or knew about it personally.
BY MR. ROSENBLATT:
Q. Well, this document, of course, was made during your tenure there?
A. That's correct.
Q. And what do you know about it?
A. What I know was what Dr. Osdene, in

conversations with Dr. Dunn and myself and other people, indicated about the need to have information that could refute charges that cigarettes were addictive.
Q. And the Defendants' Exhibit 2959, dated March 16, 1983, on the subject of Critique of Why People Smoke, DeNoble says: This paper attempts to classify cigarette smoking as a form of drug dependence, however, there appears to be several problems in the paper.
What paper is he referring to and what problems, if you know, from your tenure at Philip Morris?
A. Well, there's a cover letter that we introduced yesterday that explains it more fully, but it goes into a further explanation of criteria for addiction.
Q. Okay. I believe I have that cover letter

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from Dr. Charles to Dr. Osdene?
A. Yes. That's correct.
Q. And in the first paragraph: However, if you can show that the basic assumption of dependence is not true, then the remainder of the arguments are also not true. The concept of tolerance, when Charles is saying: But we cannot defend tolerance. Tolerance to

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nicotine is a well-established fact, and the references to the American Psychiatric Association paper of 1980, what is the background of this?
A. Could I see it?
MR. HEIM: Your Honor, may we approach?
THE COURT: Okay.
(Proceedings were had at sidebar.)
BY MR. ROSENBLATT:
Q. Dr. Farone, what is the background of the genesis of these documents?
A. As I have indicated earlier, these documents were put together to provide scientific argumentation against the thesis, if you will, that nicotine or smoking is addictive.
Q. Okay. Now, let me refer you to the document, Defendants' Exhibit 5514, dated July 23, 1980, from DeNoble, Dunn, Osdene and Ryan to Seligman.
And this is a one-page document, and you and Mr. Heim had a discussion about it.
Anywhere in this document is it mentioned that the experimentation, the evidence that Philip Morris had, was based on rat experimentation?
A. No, that's why I kept bringing it up. Rats are not mentioned anywhere in this document.
Q. Now, in the middle of the page, after the

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first three, it says: Preliminary experimentation with nicotine suggests that nicotine, when self-administered and functioning as a reinforcer, does not produce changes in ongoing behavior.
When talking about humans, would that be a valid statement?
A. No. That's the point I was making. That statement would not be valid talking about humans.
Q. And the next criteria: Termination of

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nicotine access does not produce behavioral impairments (withdrawal effects).

Is that a valid statement with respect to humans?

MR. HEIM: Your Honor, I'm going to object. This witness is not here as an expert.

MR. ROSENBLATT: He can --

THE COURT: Well, I'm not so sure, now that you've raised that issue. If he's interpreting something -- let me see that, what you're looking at here exactly.

Where are we?

THE WITNESS: One, two, and three.

THE COURT: One, two, and three.

THE WITNESS: Yes.

MR. HEIM: The middle of the page, Your

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Honor.

MR. ROSENBLATT: Well, there's a top one, two, and three, and there's a bottom. We're talking about the bottom one, two, and three.

THE COURT: The bottom, right.

Okay. Based upon your testing, if you know.

BY MR. ROSENBLATT:

Q. Okay. Whether those criteria are accurate with respect to humans, based on your testing during your tenure at Philip Morris?

A. No, the --

MR. HEIM: Objection, Your Honor. He's never done any testing.

THE COURT: I don't know. We'll find out.

THE WITNESS: The point is that I was responsible for doing chemical relationships between drugs, pharmacology, and in reading the documents and providing advice to Philip Morris on these very issues, just like Dr. DeNoble, Dr. Dunn, Dr. Osdene, and Mr. Ryan, I was also involved in providing advice.

Now, my advice was to the contrary, and the thing that I objected to and I object to in this document is the rat -- these are true for rats, they're not true for people, and I think I made that clear in the other testimony.

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BY MR. ROSENBLATT:
Q. Counsel asked you a number of questions, when certain names came up, did so-and-so have a good reputation for scientific integrity and integrity generally.
How about Dr. Osdene? What's your opinion of his scientific integrity?
A. Well, his scientific ability was very good. He was a fellow that I shared time with, but was not a person that I would consider a man of integrity or scientific integrity.
Q. Has Dr. Osdene, to your knowledge, ever publicly defended and explained his comments in a variety of documents which have been shown to you yesterday and today?
MR. HEIM: Objection, Your Honor.
(Proceedings were had at sidebar.)
BY MR. ROSENBLATT:
Q. I believe at one point in your testimony, you started to say that Dr. DeNoble -- I'm not asking you about Dr. Ozdene now, but Dr. DeNoble had changed his opinions, and I think Mr. Heim said he would get back to that but never did.
In what way did Dr. DeNoble change his opinions from those expressed in the documents which

Mr. Heim has discussed with you today?
A. Dr. DeNoble now believes that nicotine is addictive.
Q. Now, counsel asked you a couple of questions about Mr. Douglas, Cliff Douglas. How long have you known him?
A. I think it was -- the more I thought about it, September or October, late '96, I believe.
Q. And he's a lawyer who practices -- lives where and practices where?
A. He lives in Michigan.
Q. You were asked a lot of questions about tar coming down and whether you thought you were doing good work and whether the people there were doing good work.
During the eight years that you were with Philip Morris, were you ever able to establish scientifically that the reductions in tar that were achieved at Philip Morris created in reality a

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safer
cigarette?
A. No.
Q. Why weren't you able to prove that?
A. Well, you can prove it on two levels. One is if you have animal testing that is related to humans, or to the best of our knowledge we try to make it related, like inhalation tests, on the products.

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I think I mentioned four. I mean, if we start with Marlboro and you go to Marlboro Lights, then you would expect to see less tumors in the animals from Marlboro Lights than Marlboro.
From there, you might consider Merit, because that's a low-tar cigarette. That should be less. And then Merit Ultra Lights or Merit, whatever they called them, Ultra Lights, and Ultra Lights, if you tested that, you'd expect it to be less.
And in order to do that, you either have to have enough evidence over the years from people smoking it, or you do it clinically, or you do it in animals, and in no case have I ever seen any data that compares products like that, one to another.
Q. Now, you were asked questions about peanut butter, bacon, whether carcinogens exist in those products.
To your knowledge, has the Surgeon General of the United States ever done a report on peanut butter or bacon?
A. Not to my knowledge.
Q. While you were at Philip Morris for those eight years, did Philip Morris ever test the actual cigarettes that were put in a package of Marlboros?
A. No.

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Q. Do you know one way or another, during the eight years that you were at Philip Morris, did they in fact produce, did they in fact manufacture a safer cigarette?
A. I can't state that conclusively.
Q. Can anyone?
A. Not that I'm aware of.

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Q. Doctor, you came to Miami to meet with me and you came in Sunday night. You've got a family and business in California. It's now Wednesday. Hopefully you're returning to California tonight. You're not getting paid. Why do you do this?

MR. HEIM: Objection, Your Honor.

THE COURT: Overruled.

BY MR. ROSENBLATT:

Q. Why do you do this? Why do you subject yourself to this?

A. There isn't often that you have a chance -- there are 350, 400,000 people a year that die from smoking-related diseases, and if you have an opportunity to do something that might result in a reduction in those deaths, you do it. I mean, I just feel that way about it.

MR. ROSENBLATT: Thank you, Dr. Farone.

MR. HEIM: Your Honor, before the witness is

excused, may we approach about one issue?

THE COURT: Yes.

(Proceedings were had at sidebar.)

THE COURT: Okay. Let's take a short break, folks, while we get our act together.

(The witness was excused.)

(The jurors exited the courtroom.)

THE COURT: All right. We'll be in short recess. I think we're going to be looking at -- no, that's Johnson -- Campbell's deposition, if I can find it. Okay.

Do you have somebody to do your reading?

MR. ROSENBLATT: Mr. Silverman or Mr. Douglas.

THE COURT: Okay.

(A brief recess was taken.)

THE BAILIFF: Take your places, please. All rise.

THE COURT: All right. Have we got everybody here we need to have?

MR. ROSENBLATT: Pardon me, Judge?

THE COURT: Everybody we need?

MR. ROSENBLATT: Mr. Silverman is going to read the answers.

THE COURT: Okay.

MR. ROSENBLATT: Do you have a copy?

THE COURT: I think I do.

MR. ROSENBLATT: I think mine is accurate.

THE COURT: What, do you want one? Do

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you need one?
MR. ROSENBLATT: No. I just would like to have someone that's double-checking.
THE COURT: My problem is I didn't mark mine up more than what I originally did, and whether there was any change, I left it up to you.
MR. HEIM: I have the ins and outs as well.
THE COURT: I have my original ins and outs, but I think one or two of those changed after some discussion. So I'll rely upon what you wrote down as to the change and hopefully his copy is marked up also.
MR. HEIM: There's a couple pages that are tricky.
THE COURT: Okay. We have one little problem. Mr. Silverman's copy is not marked.
MR. ROSENBLATT: But I'll tell him. I'll direct him to go -- I'll say: Go to page such and such, and where to stop.
THE COURT: That's where the line starts but he may inadvertently not stop, or I could give him mine. Mine isn't totally accurate as to what the final

disposition was. Let's try it your way and see if it works.
MR. ROSENBLATT: Okay.
THE COURT: Okay. Let's go ahead and get the jury out, please.
It might be easier if you use mine. You don't have very many marks on yours, do you?
MR. SILVERMAN: Not very much.
THE BAILIFF: Bringing in the jury.
(The jurors entered the courtroom.)
THE COURT: All right. We're back. We are going to get into the reading of a deposition, and I've explained to you earlier what a deposition was, and the same rules apply. You will accept the testimony from this deposition just as you would had the witness been here live to testify. Mr. Silverman will take the part of a -- is it Dr. Campbell?
MR. ROSENBLATT: No. This is the former CEO of Philip Morris.
THE COURT: William Campbell.

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MR. ROSENBLATT: William Campbell.
MR. HEIM: He was president of Philip Morris at the time the deposition was taken though.
MR. ROSENBLATT: And the date of the deposition is October 11th, 1993.

THE COURT: Okay.
MR. ROSENBLATT: Okay. Page 3.
JUROR 860: Was that Mr. or Dr. Campbell?
MR. ROSENBLATT: Mr.
THE COURT: Mr. He was the president of Philip Morris in 1993 and the CEO?
MR. ROSENBLATT: Yes.
JUROR 860: Thank you.
THE COURT: Go ahead.
(The deposition of William I. Campbell was read as follows:)

Q. State your name, please.
A. My name is William Campbell.
Q. Do you have a middle initial or middle name?
A. William Ian Campbell.
Q. And what is your business address?
THE COURT: I'm sorry. You can read Line 13.
MR. HEIM: 12 and 13 were out, Judge.
THE COURT: No. That was in.
MR. HEIM: No. You took it out.
THE COURT: All right. I took it out.
MR. HEIM: I don't care, really. Let him read it. It doesn't make any difference.
MR. SILVERMAN: Where am I?
THE COURT: Oh, I see where you're going.

Business address is Line 15.
A. My business address is 100 Park Avenue -- 120 Park Avenue, New York, New York.
Q. You are the president of what entity?
A. I'm president of Philip Morris, Incorporated.
Q. How long have you been president of Philip Morris, Incorporated?
A. Almost exactly three years, three years last September.
Q. All right. Had you been with Philip Morris, Incorporated, prior to the time that you became president?
A. Yes.
MR. ROSENBLATT: Now we go to Page 6, Line 17.
Q. Well, for example, what is the difference between Philip Morris Companies and Philip Morris,

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Inc.?
A. A huge difference. Philip Morris, Inc. is an operating tobacco company, operating primarily in the United States.
Philip Morris Company is a holding company with a broad group of companies reporting to it.
Q. Who is the president of Philip Morris Companies?

A. William Murray.
Q. He's located where?
A. He's located in New York.
Q. New York?
A. Yes.
Q. At the same address as you are?
A. That is correct.
Q. Okay. Who has the power, assuming there is such an individual, to fire the president of Philip Morris, Inc.?
A. It would be a -- either the executive vice-president, the president, the chairman of Philip Morris Companies, but would be done in consultation with the board of directors, probably.
Q. Okay. Who is the number-one person connected with Philip Morris Companies? I mean, the boss of bosses, so to speak?
A. The chairman of Philip Morris Companies is Michael A. Miles.
MR. HEIM: Page 12.
MR. ROSENBLATT: Page 12, Line 17.
Q. In terms of the overall income to the Philip Morris Companies, what percentage is tobacco?
A. Talking revenues or income?
Q. What is the difference?

A. Revenues are sales.
Q. All right.
A. And then income can be, depending upon your definition --
Q. Revenues.
A. Revenues?
Q. Yes.
A. It's something in excess of 50 percent, 53, 55 percent nontobacco.
Q. So the nontobacco is slightly more than half?
A. Yes.
Q. Slightly more than half?
A. Somewhere between 50 and 60, I would estimate.
MR. ROSENBLATT: Which line?

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MR. HEIM: Just keep reading.
Q. Okay. How many different tobacco brands are there within the Philip Morris umbrella?
A. Around the world or in the United States?
Q. United States.
A. I would say there must be, you know, 12 to 15 that are the major ones -- the major ones, 6 or 8.
Q. Tell me those 6 or 8.
When you say "major," you mean the best sellers?

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A. That is correct.
Q. Okay.
A. Marlboro, Virginia Slims, Benson & Hedges, Merit, Parliaments, and now we have Alpine, Basic, the low-price entry, seven or so.
Q. What is your number one --
A. Cambridge, eight.
Q. What is your number-one discount brand?
A. Basic.
Q. What is your number-two discount brand?
A. Cambridge.
Q. Now, when we talk about cigarette products outside of the United States --
A. Yes.
Q. -- how many different brands, approximately, are there in other countries?
A. How many?
Q. Yes.
A. I can't go any further than hundreds.
Q. Hundreds?
A. You mean, hundreds -- there are several hundred --
MR. ROSENBLATT: No, no.
MR. SILVERMAN: Oh, I'm sorry.
A. Yes.

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Q. You mean, hundreds -- there are several hundred individual name brands?
A. Yes.
Q. Okay.
A. Yes.
Q. Okay.
A. Because each company, you know, operating company around the world, would have something like 15 that we have here in the United States.
MR. ROSENBLATT: What page?
MR. HEIM: 17.
MR. ROSENBLATT: Page 17, Line 18.
Q. So what do you spend -- give me like the five top categories as to how you spend most of your time.

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A. Business strategy.
Q. All right.
A. Marketing strategy, sales execution.
Q. All right.
A. Financial cost responsibility.
Q. All right.
A. And operating a factory.
MR. ROSENBLATT: Page 19, Line 21.
Q. All right. I had asked you about your immediate supervisor.
Who is that?

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A. Well, I'm the boss at Philip Morris, Inc., and I report to the Philip Morris Companies Group, which is Geoff Bible, Bill Murray, and Mike Miles, and I also report to someone called a management committee, which is part of Philip Morris Companies.
MR. ROSENBLATT: Page 21, Line 16.
Q. All right. You say that you spend a good portion of your time involved in marketing strategy.
Break that down for me a little as to what that would involve.
A. It involves our products, how products are to be sold, what, you know, what competitive framework they are operating in, what their pricing and promotion philosophy should be, and what their, in a broad sense not involved in a day-to-day basis, in a broad sense, what their advertising should be.
Q. These promotional things that have been very abundantly exposed in recent times, is that part of the marketing strategy?
I'm referring to T-shirts and caps with logos of the various companies.
Is that -- would that be subsumed under the heading of marketing strategy?
A. I don't think so, but I'm not sure I understand the question.

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Can you --
Q. Well, let's see if I have something.
A. Okay.
Q. I mean, this kind of stuff.
A. No, Marlboro -- yes.
Q. All right.
A. This would not be called marketing strategy.

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This would be called marketing execution. But --
MR. ROSENBLATT: Okay. And then we go to
Page 24, Line 6.
Q. When did Philip Morris get heavily into this
kind of advertising, as reflected in Exhibit Number 2?
A. When?
Q. Yes, where basically prizes are given to
smokers, and free gifts and that kind of thing.
A. There have been these kind of sweepstakes
going on in this industry for quite some time.
I could not say how long, but quite some
time.
Q. So it's really nothing all that new?
A. No.
MR. ROSENBLATT: Judge, rather than
interrupt, there are some -- when we discuss exhibits,
should I introduce --
THE COURT: Well, if it's really important.

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MR. ROSENBLATT: I'd just as soon wait until
the end and just offer them.
THE COURT: It might be important for the
jury to know what you're talking about. Exhibit Number
Two was what?
MR. ROSENBLATT: (Indicating)
THE COURT: It's called Marlboro Country
Store; is that what it says?
MR. ROSENBLATT: Marlboro Country Store, Gear
for the Great Wide Open.
THE COURT: Jackets and things?
MR. ROSENBLATT: Yes.
MR. HEIM: Should we mark that for
identification at this point, Your Honor?
THE COURT: Yes. Well, mark it -- was it an
exhibit? You can mark it.
MR. HEIM: It's Exhibit Two to the
deposition.
MR. ROSENBLATT: And Plaintiffs' Deposition
Exhibit Number 1694.
(Plaintiffs' Exhibit No. 1694 was marked for
identification.)
THE COURT: That's what we'll need, 1694.
THE CLERK: Okay.
THE COURT: All right. We're on Page 25 now?

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MR. HEIM: Yes.
MR. ROSENBLATT: Line 13.

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Q. Does cigarette smoking cause cancer?
A. To my knowledge, it's not been proven that cigarette smoking causes cancer.
Q. What do you base that on?
A. I base that on the fact that traditionally, there is, you know, in scientific terms, there are hurdles related to causation, and at this time, there is no evidence that -- they have not been able to reproduce cancer in animals from cigarette smoking.
Q. Have several Surgeon Generals of the United States concluded that cigarette smoking causes cancer?
A. Yes.
Q. Why don't you accept their conclusions? I mean, based -- you don't have a scientific background, so what I want to know is, what information do you have, what literature have you received, or in-house memos, that cause you to conclude that they are wrong?
A. I have not concluded that they are wrong. I said that it has not been proven.
MR. ROSENBLATT: Page 27, Line 7.
Q. You are saying it has not been proven to you.
What would you need to prove it to you? In other words, why are those thousands of --

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THE COURT: That's out.
MR. ROSENBLATT: That's out?
THE COURT: Yes. Just drop down to 13.
MR. HEIM: Go to 13.
A. I think that there is an argument that says that it has not been proven, causal relationship, between smoking and disease such as lung cancer. It has not been proven at this time.
Q. That is what I'm asking you. What is the argument?
A. The argument is that, you know, causal relationship in animals has not been proven.
THE COURT: Just Lines 21 and 22.
Q. Well, I am not talking about animals. I'm talking about human beings.
MR. ROSENBLATT: And then you go to Line 5 on Page 28.
A. Well, you know, I'm far from a person to try to play out the scientific process for you, but,

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you
know, we acknowledge that there are risks associated
with smoking, and certain diseases, such as lung
cancer, but you know, that is from epidemiological
data, and, you know, further steps in causal
relationship are normally associated with animal
testing, and, you know, a clear relationship such as

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that, such as dose and response -- and I am not a
scientist, so that is about as much as I can say.
MR. ROSENBLATT: Page 30, Line 25.
Q. Can you name a single scientist or medical
doctor who has -- who, today, will publicly say that he
or she doesn't believe that it's been proven that
cigarette smoking causes cancer? Somebody not employed
by the tobacco industry, or never got money from the
tobacco industry.
A. I can't answer it.
MR. ROSENBLATT: And we go to Page --
MR. HEIM: I think you finish the next five
lines --
THE COURT: No.
MR. HEIM: -- six lines.
MR. ROSENBLATT: Okay.
Q. Have you ever read, has anyone ever pointed
you to an article?
A. Yes, I have seen articles in that direction,
yes.
Q. You have?
A. Yes.
MR. ROSENBLATT: Page 41, Line 41 -- I mean
Page 41, Line 8.
Q. Okay. Are you aware of a survey, which

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appeared in the July 1991 issue of the American
Journal of Public Health, which examined the opinions of
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scientists, who worked on projects financed by The
Council for Tobacco Research in 1989?
MR. ROSENBLATT: And then just go to your
answer on 16.
A. I am not aware of that study.
Q. You are not?
A. No.
Q. That was never brought to your attention by
anyone?
A. I vaguely -- I mean, I remember hearing
something of it, but I was not, you know,

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intimately
involved with it.
Q. Did you ever read the study?
A. No, I did not.
Q. All right. Is cigarette smoking, is tobacco
addictive?
A. No, I do not believe that tobacco smoking is
addictive.
Q. Based upon what?
A. Based upon the fact that something like 40
million or 50 million Americans have quit smoking.
Q. How many millions of Americans have tried to
quit smoking unsuccessfully?

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A. I don't know.
Q. You don't know?
A. No.
Q. All right. Is there any other basis for your
answer that you don't consider tobacco or cigarette
smoking to be addictive, other than the answer that you
just gave to me?
A. I have heard other arguments, but they are
more scientific and technical than the one that I just
gave you.
Q. Okay.
A. I would be on shaky ground then. I stand on
what I just said.
Q. All right. Can you repeat any of those
arguments, even in a general way?
A. I would not try.
MR. ROSENBLATT: Page 48, Line 2.
Q. The warning that appears on all products,
cigarette products, put out by Philip Morris, you are
required to put those warnings on, correct? I mean,
you are not doing it voluntarily?
A. That is correct.
MR. ROSENBLATT: Page 61, Line --
THE COURT: I think it's probably 62.
MR. HEIM: 62, I think, yes.

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MR. ROSENBLATT: 62?
THE COURT: Let me just take a look at this
one (indicating).
Yes, 62. Yes, you're down to Line 17 --
actually you can read this one because this one is
better.
MR. SILVERMAN: Okay. Where are we?

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MR. ROSENBLATT: We're on 62, Line 17.
Q. Okay. What is the Special Projects Division of the Council for Tobacco Research?
A. I don't know.
Q. You don't know?
A. No.
Q. You don't know the purpose of the Special Projects Division?
A. No.
MR. ROSENBLATT: Page 64, Line 21.
Q. Will you accept that tobacco use is responsible for the premature deaths of some people in this country every year, or do you say it is zero?
A. I don't know.
Q. You don't know?
A. No.
MR. ROSENBLATT: Page 67, Line 17.
Q. Well, certainly, you are not sitting there

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telling me that in your heart of hearts that you don't believe that smoking cigarettes has caused lung cancer and death, not to a single person?
A. I am not telling you that. I'm saying that it has not been proven that there is a causal relationship between cigarette smoking and lung cancer.
Q. So, in other words, just so I'll understand what your position is, you will not admit to the fact that smoking cigarettes has caused lung cancer and death to certain smokers in this country?
A. I can't -- I just don't know.
Q. You don't know?
A. No.
MR. ROSENBLATT: Page 75, Line 8.
Q. All right. What would it take to prove to you -- you say it's not proven.
What would it take -- have you ever thought in your own mind what piece of evidence that you would have to see that would cause you to say, "Well, you know, hey, I'm finally convinced"?
A. Causal relationship, a direct link between disease in humans and cigarette smoking.
Q. Okay.
A. Dose response, et cetera.
Q. But on a specific basis. Now, that is pretty

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general.
A. Right.
Q. Okay.
A. That is about as specific as a nonscientist can give you. I'm sorry.
MR. ROSENBLATT: Page 79, Line 7.
Q. What do you think causes most lung cancers? Do you think genetic factors are responsible for most?
A. From -- and this is layman's -- I think that cancer, all forms of cancer, is a very complicated disease, and there are a number of confounding factors related to the development of cancer in humans.
Q. But don't you see that -- the problem, you know, with that kind of thinking, that if you simply say that, you know, every form of cancer is complicated, and there are a variety of factors, the logical conclusion of that is, you can never prove that a particular environmental product, or any particular thing, caused any cancer.
I mean, that is basically what you believe, isn't it, that it's so complicated that anyone who develops cancer, the reason in any one given case is a lot of reasons, not just one thing?
A. That would be my personal belief.
Q. It would?

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A. Yes.
MR. ROSENBLATT: Page 81, Line 3.
Q. Okay. What do you say to all of those people that say, you know, "I've tried to quit smoking. I have been to courses. I have been to shrinks. I stopped for a few days, but I can't stop. I'm back?"
What do you say to those people?
A. I say there are 50 million Americans that have quit, and if you set your mind on it, and that is what you really want to do, you will do it.
Q. Willpower?
A. Uh-huh.
MR. ROSENBLATT: Page 98, Line 4.
Q. If the language of any warning says, "Smoking causes cancer," is that an accurate statement?
A. I would say that it has not been proven.
MR. ROSENBLATT: Page 100, Line 19.
Q. But you have no way of certifying the

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number
of children who may see an adult smoker walking around
with a Marlboro T-shirt or cap?
A. No.
Q. That is impossible, right?
A. As far as I know, yes.
Q. Okay. Are you able to give me even a rough
estimate of how many T-shirts that Philip Morris has

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given away displaying Philip Morris brands?
A. No, I could not do that. I'm sorry.
Q. Is it in the millions?
A. Yes.
Q. It is?
A. Yes.
MR. ROSENBLATT: Page 122, Line 5.
Q. Basically, the only positive claim you can
say about cigarettes is that, to some people, they taste good?
A. Uh-huh.
Q. Right?
A. It makes -- you know, they feel good when
they are smoking, yes, sir.
Q. Correct?
A. Yes.
MR. ROSENBLATT: Page 139, Line 20.
Q. All right. Are you aware that there are some
medical authorities that say that tobacco is more addictive than heroin and cocaine?
A. I have heard that phrase. I don't know which
medical authorities it's been attached to.
MR. ROSENBLATT: Page 141, Line 11.
Q. Okay. Does Philip Morris have billboards at
all the stadiums around New York? I mean the Giant

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games, Shea Stadium, Yankee Stadium?
A. I think those three stadiums we have signs,
yes.
Q. For Marlboro or for other products, as well?
A. I think Marlboro definitely. There may be
other products, as well, but I think -- I think Miller
is in some of them, not in others.
Q. Okay. When you were growing up in Canada,
did you ever hear Arthur Godfrey?
A. Yes.
Q. You did?
A. Yes.

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Q. Do you remember who his sponsor was?
A. No.
Q. No?
A. No.
Q. Chesterfield.
A. Okay.
Q. Which company makes Chesterfield?
A. Liggett & Myers.
Q. Liggett & Myers?
A. Yes.
Q. All right. Godfrey developed lung cancer?
A. I don't know.
Q. Do you know what caused his lung cancer?

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A. No, I don't.
Q. Was he a smoker?
A. I don't know.
Q. Was he popular in Canada?
A. You know, I mean, I was pretty young, so I could not judge depth of popularity, but he was certainly on the radio.
Q. He was?
A. Yes.
Q. How does Philip Morris make sure that cigarettes are not sold to kids?
A. We have a lot of programs. The principal ones are, we hand out -- our sales force works with retailers and hand out reminders that it is the law, and basically, you know, we meet at -- we go to retail association conventions and things like that and reemphasize, you know, that all efforts should be made to avoid the sale of cigarettes to minors.
We work with vending machine operators to try to get their vending machines in sight of where they can be supervised by an adult, things like that.
Q. Well, if there were no legal reasons, purely legal reasons, containing sanctions against the sale of cigarettes to minors, would Philip Morris have any problem with selling cigarettes to minors?

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A. You mean if it was legal?
Q. If you could sell cigarettes to 12-year-old kids, 11-year-old kids, would you have a problem with that, as president of Philip Morris, Inc.?
A. I think that, you know, and again, I'm relying upon history, but I think that -- you know, I was not in this country, but I think the industry

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-- it
is clearly stated that they do not want to sell their products to minors, and have taken action to reinforce that for a number of years.

Q. All right. So is it your understanding that it is not because of the legal penalties or sanctions that would be imposed, but this is an industry-wide standard, that the industry, itself, is against the sale --

A. That is my understanding.

Q. Okay. Why would that be?

A. Why?

Q. Yes, since, according to you, you know, the --

A. Well, the thing is that I'm only reacting as an individual, but I think the company feels the same way, that there are certain products and pursuits that are -- that should be part of adulthood, and that is our position in -- on smoking.

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Q. All right.

A. It would be the same position that we have on alcohol.

Q. But if cigarettes make people feel good and they are not harmful, why shouldn't kids smoke?

A. Because there are risks associated with smoking that they should be, you know, informed about, and be fully adult before they make the decision.

Q. What are those risks?

A. The statistical association between smoking and certain types of disease, including lung cancer.

Q. How about heart disease?

A. I'm not sure of the state of the statistical association in that regard.

Q. How about emphysema?

A. I'm not sure.

Q. How about other forms of cancer, other than lung cancer?

A. I am not sure. I'm not sure.

Q. What is the yearly advertising budget of Philip Morris -- of Philip Morris, Inc.?

A. Between 200 and 300 million dollars.

MR. ROSENBLATT: The last question on Page 145.

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Q. Okay. In how many countries of the world

does Philip Morris have production factories?
A. It used to be about 75. It must be 100 now.
Q. 100?
A. Yes.
MR. ROSENBLATT: Page 158, Line 22.
Q. In terms of the Tobacco Institute, do you and other presidents get together?
A. Yes.
Q. How often?
A. That was the one that I mentioned, probably four times a year, something like that.
Q. All right.
A. And the CTR board meets twice a year.
Q. Twice a year?
A. Yes.
MR. ROSENBLATT: Page 166, Line 14.
Q. All right. Does Philip Morris have a policy of discounting cigarettes to your employees?
A. We have a program that they receive so many free cigarettes from time to time.
Q. Do you know? I mean can you be a little more specific?
A. Not much.
Q. You mean a certain amount of cartons per year?

A. I think it's a carton every couple of weeks, something like that.
MR. ROSENBLATT: Is that it, Judge? No, I think -- in terms of this?
THE COURT: No. There's some more.
MR. ROSENBLATT: Okay.
THE COURT: I just happened to run across 186. I'm not sure if that's the only one. Let's take a look through it.
MR. HEIM: I have it marked as out, Judge.
THE COURT: I'm sorry?
MR. HEIM: I have it marked as out.
THE COURT: Oh, that's not on my copy. 185, 186, that page didn't get marked, but the previous page did. You're right. Okay. I guess that's it. All right. Thank you.
MR. ROSENBLATT: Thank you.
MR. SILVERMAN: That's it?
THE COURT: Yes.
MR. SILVERMAN: Where is the camera?

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21 THE COURT: Oh, you only came because of the
22 camera?
23 MR. ROSENBLATT: Your 15 minutes of fame.
24 MR. SILVERMAN: That's it. I'm done.
25 (Mr. Silverman was excused.)

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1 THE COURT: Okay, folks. We put in a good
2 day. It's 20 after 4:00. It's time to break because
3 we have nothing else to do within our time frame, and
4 we will see you tomorrow at our usual time, 9:15. We
5 will be off on Friday, so you can make plans for that
6 day. But we have a full day tomorrow, or at least most
7 of it.
8 So we'll be working tomorrow, usual time.
9 Same place, same station. Don't read anything, watch
10 anything, do any research. Don't talk about the case
11 or any related issues. Have a nice, pleasant evening.
12 (The jurors exited the courtroom.)
13 THE COURT: I'm getting buried in paper. I
14 don't know what we're going to do with all this stuff.
15 All right. Somebody handed me Homburger.
16 THE CLERK: Yes, Mr. Moodhe.
17 THE COURT: Pardon?
18 THE CLERK: Mr. Moodhe.
19 THE COURT: Okay. What are we --
20 MR. HEIM: What are we doing tomorrow?
21 THE COURT: I don't know. What are we doing
22 tomorrow?
23 MR. ROSENBLATT: Ray Morgan.
24 THE COURT: Ray Morgan.
25 MR. ROSENBLATT: He's on video.

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1 THE COURT: Yes. I just did that one last
2 night.
3 MR. ROSENBLATT: Which one do you want to do
4 tonight? That's what it amounts to.
5 THE COURT: Yes, apparently so, because that
6 one wasn't too long, as I could see it.
7 MR. ROSENBLATT: The Morgan one?
8 THE COURT: Yes.
9 MR. ROSENBLATT: No. This one, Campbell, was

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not long.
THE COURT: I don't think Ray Morgan's is
that long, or is it?
MR. SCHNEIDER: I thought that video was
about two or three hours.
THE COURT: The problem was there weren't
that many objections because I was able to zip through
it quickly.
MR. HEIM: I think we can get through the
objections pretty fast. The video will take a while.
THE COURT: We'll have to do another one
because that won't take the whole day.
MR. ROSENBLATT: Right.
MR. HEIM: Homburger.
THE COURT: This is Homburger, and what I see
here is green markings. I don't have the plaintiffs'

markings on this one.
Green means you folks want this one in,
right?
MR. SCHNEIDER: Joe Moodhe is going to argue
that one, Your Honor, and he's not here at the present
time.
THE COURT: No, but, I mean, green --
MR. HEIM: Green is the counter-designations.
THE COURT: Green is your
counter-designations. And that's all I've got in this
copy.
I don't have your designations.
MR. ROSENBLATT: We would probably -- rather
than -- I mean, Mr. Moodhe handed this to me today.
We're not necessarily interested in showing Homburger
tomorrow. We would just as soon focus on the CEOs
either by way of video -- and here's a list, Judge.
THE COURT: Well, tell me who you want.
MR. ROSENBLATT: James Morgan is on video.
THE COURT: Okay. I have his upstairs.
MR. ROSENBLATT: Andrew Schindler.
THE COURT: I think I have Schindler
upstairs.
MR. ROSENBLATT: And then we probably -- yes,
I mean, another one -- a deposition that would strictly

be reading would be James Johnston of Reynolds.

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THE COURT: Okay. Let me write those three down. Let's see. We've got Morgan, Schindler --
MR. SCHNEIDER: And James W. Johnston.
THE COURT: Johnston.
MS. PULLEY: Your Honor, Andrew Schindler is going to take extensive argument. There's about 15 pages of youth marketing documents attached to that deposition, and I know Mr. Kirby will -- there's a lot of objections to that particular one.
THE COURT: I'll go through it and see what we can do when it gets to that area. As I say, nothing that I do is written in stone. I'll just go through it, and then when we run through it among ourselves, if there's a questionable area, we'll talk about it.
MS. PULLEY: I don't believe Your Honor has a copy of that, so let me hand it to you.
THE COURT: Of the Schindler depo?
MS. PULLEY: We have a new highlighted copy because we've amended it.
THE COURT: You say you do or do not?
MS. PULLEY: I do, I believe.
THE COURT: Oh, with you?
MS. PULLEY: Yes, right now.
THE COURT: Oh, okay.

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MR. ROSENBLATT: So Morgan -- William Ray Morgan, James J. Morgan, Schindler, and James W. Johnston are the ones --
THE COURT: Yes. I'm just waiting for the Schindler depo.
MR. ROSENBLATT: I understand. And in terms of next week, Judge, just so --
MR. HEIM: Can I have one?
MR. ROSENBLATT: You don't have one?
MR. HEIM: No.
MR. ROSENBLATT: I have an extra one. (Hands document)
MS. PULLEY: This is Schindler. I believe Your Honor already has one.
THE COURT: I don't know.
MS. PULLEY: The Johnston one is shorter.
THE COURT: Okay.
MR. SCHNEIDER: The witnesses listed as live witnesses for next week are Father Drinan and

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Dr. Uydess. With respect to Father Drinan, that's a particularly difficult issue because Father Drinan is a lawyer and a priest.

THE COURT: Oh, yes, yes. I know him.

MR. ROSENBLATT: Congressman.

THE COURT: Yes.

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MR. SCHNEIDER: He's going to testify about the attorney/client privilege, issues concerning privileged documents. There has been no Zolin hearings, and there's a number of other problems. I think we can address that issue on Friday. But I wanted to alert the Court to that issue.

We can show you some specific excerpts from his deposition where we ask for specific opinions. He doesn't give any. He says that tobacco lawyers are not entitled to defend the companies, and a number of unusual things, and there are privilege issues with respect to this. There have been no hearings on privileged documents, and I think there's a number of problems with his testimony in this case.

THE COURT: Is he a definite schedule or is he flexible?

MR. ROSENBLATT: Well, he's planning on coming in Sunday. He's a professor at Georgetown.

THE COURT: Yes. He does a lot of stuff.

MR. ROSENBLATT: He's committed to come in Sunday.

THE COURT: This coming Sunday?

MR. ROSENBLATT: Yes.

THE COURT: Let's see where we go on Friday and see what happens on Friday.

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Are we going to take up privilege on Friday?

MR. SCHNEIDER: No. I think we're going to take up an argument with respect to whether or not this gentleman can testify about those issues. I mean, for example, a question about whether a document is privileged or not is an issue for the Court. Once the Court makes that decision, it's not to be discussed with the jury. So we can take that up with Your Honor

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on Friday.
THE COURT: He's also an expert in theology?
MR. SCHNEIDER: Yes.
THE COURT: Why don't we talk to him about that.
MR. ROSENBLATT: And also lobbying in Congress.
THE COURT: Yes.
MR. HEIM: And he was a speaker for me.
THE COURT: He was a speaker for you?
MR. HEIM: Well, in a Bar Association proceeding, he introduced some people that --
THE COURT: He's a very interesting guy.
MR. HEIM: He is an interesting guy.
THE COURT: All right. Let's see what happens. Okay. I've got my homework done here. Okay, folks.

The Homburger one, I think you're going to have to give me a marked copy, if you want to mark this one, because they've got their designations in this one.
MR. ROSENBLATT: I have one.
THE COURT: That's marked with all the markings?
MR. ROSENBLATT: Yes. I think Mr. Moodhe gave me what he gave you.
THE COURT: Well, the only thing I've got here is his designations. I don't have your designations, nor the objections, unless you just -- well, maybe I do.
MR. ROSENBLATT: What I got from him was something called revised objections.
MR. SCHNEIDER: Has he not marked the objections?
THE COURT: I looked at this thing and I didn't see in the corner there -- it looked like there wasn't very much. You didn't designate very much on Homburger yourself, Mr. Rosenblatt. Why don't you look at this (indicating) and see if this is the same thing you've got, because I thought it was incomplete, but it may not be. If it isn't, then there's not much in it.
MR. SCHNEIDER: Don't you have the same copy?

MR. ROSENBLATT: I just think that Joe gave

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me what he gave the judge.

THE COURT: Look it over. Let me know tomorrow about that one, if that's the truly marked copy, and we'll see you folks tomorrow. Work out what we can and worry about it Friday.

MR. ROSENBLATT: Goodnight.

THE COURT: Yes. Goodnight.

(Court was adjourned at 4:30 p.m.)

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